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RELIGIOUS BELIEF AS EXCUSE FOR FAILURE TO FURNISH MEDICAL ATTENDANCE.

The practice of medicine or the art of healing may fairly be assumed to date back to the beginning of man. Certainly it has existed in one form or another for such period of time as mankind has been able to record. Probably the earliest example of medical practice of which we have a record is found in Egyptian history, though medicine in China was undoubtedly known and practiced in those dim ages of which no record other than tradition is available. It was, from the very beginning, more or less associated with religious belief, and its practice and teaching were in the hands of the priests of the various deities, and for many years they were the sole prototype of the modern "medic." In the early stages of its development it was elemental in form, ranging from the weird incantations of the priests, the use of a formidable array of crude and curious concoctions and barbarous remedies, to the taking of quarts of blood on the slightest provocation as practiced by the profession in comparatively recent years. Today we enjoy the benefits of scientific surgery, extensive knowledge of drugs and the liberal use of common sense, sunshine and moonshine.

In whatever form practiced it was early recognized as a necessity, and as it perfected itself, was so recognized by the law, until today we have the well-established doctrine that the omission of one on whom rests the duty of supplying medical attendance to those dependent on him renders him liable for the consequences. This rule is based on and is an outgrowth of the rule that where damage or injury is the direct and immediate result of the omission of a person to perform a plain duty imposed on him by law or by contract, he may be held accountable The duty imposed, however, must be a plain and positive duty. That is, it must be one as to which different minds agree, and that does not admit of any discussion as to its obligatory force. Where doubt exists as to what conduct should be pursued in a particular case, and intelligent men may differ as to the proper action to be taken, the law does not impute guilt to any one, where from the omission to adopt

one course instead of another fatal consequences follow to others. The law does not enter into the reasons governing the conduct of men in such cases to determine whether they are culpable. In addition the duty must be one which the party is bound to perform by law or by contract, and not one the performance of which depends simply on his humanity, or his sense of justice or propriety. As was said in *People* v. *Beardsley,* 150 Mich. 206, 13 Ann. Cas. 34, 113 N. W. 1128, 121 Am. St. Rep. 617, 13 L. R. A. (N. S.) 1020: "The law recognizes that under some circumstances the omission of a duty owed by one individual to another, where such omission results in the death of the one to whom the duty is owing, will make the other chargeable with manslaughter. * * * This rule of law is always based upon the proposition that the duty neglected must be a legal duty imposed by law or by contract, and the omission to perform the duty must be the immediate and direct cause of death." Thus even in the absence of such obligations, it is undoubtedly the moral duty of every person to extend to others assistance when in danger; to throw, for instance, a plank or rope to a drowning man, or make other efforts for his rescue. And if such efforts should be omitted by any one when they could be made without imperiling his own life, he would, by his conduct, draw on himself the just censure and reproach of good men, but this is the only punishment to which he would be subjected by society.

As a second prerequisite necessary to render criminal the neglect of parents or others having charge of children or other dependents, there must be capacity, means and ability as well as the legal duty to provide and act. But as was said by Lord Russell in *Reg.* v. *Senior* (1899) 1 Q. B. (Eng.) 283, 19 Cox C. C. 219: "Neglect is the want of reasonable care—that is, the omission of such steps as a reasonable parent would take, such as are usually taken in the ordinary experience of mankind—that is, in such a case as the present, provided the parent had such means as would enable him to take the necessary steps. I agree with the statement in the summing up, that the standard of neglect varied as time went on, and that many things might be legitimately looked upon as evidence of neg-

lect in one generation, which would not have been thought so in a preceding generation, and that regard must be had to the habits and thoughts of the time. At the present day when medical aid is within the reach of the humblest and poorest members of the community, it cannot reasonably be suggested that the omission to provide medical aid for a dying child does not amount to neglect."

Among the domestic relations of society there are many as to which the law has imposed certain positive and unquestioned duties. Of these the most common may be said to be that of parent and child and husband and wife. It is well settled that where a parent wilfully omits to provide shelter, clothing and food for an infant child, and by reason of such omission the child dies, the parent is guilty of manslaughter, and it has been held that medical attendance comes within the scope of the duty imposed on a parent to furnish necessaries to a child, when it is reasonable and proper that medical treatment and assistance should be provided. *Rex* v. *Brooks,* 9 British Columbia 13; *Rex* v. *Lewis,* 6 Ont. L. Rep. 132, 23 Can. L. T. 257, 7 Can. Crim. Cas. 261, 2 Ont. W. Rep. 290, 566. That such an omission may amount to manslaughter in case of the death of the neglected person is well established. Thus in *Westrup* v. *Com.,* 123 Ky. 95, 93 S. W. 646, 124 Am. St. Rep. 316, 6 L. R. A. (N. S.) 685, it was said: "Involuntary manslaughter is the killing of another person in doing some unlawful act not amounting to a felony, nor likely to endanger life, but without intention to kill, or where one kills another while doing a lawful act in an unlawful manner. * * * Any person neglecting to discharge a duty required of him, either by law or contract, thereby causing the death of another, is guilty of involuntary manslaughter. Thus, if a parent or master neglects to supply food and clothing or medical attendance to a child or apprentice whom he is under a legal obligation to maintain, and the child or apprentice dies of the neglect, he is guilty of involuntary manslaughter. * * * Where the husband neglects to provide necessaries for his wife, or medical attention in case of her illness, he will be guilty of involuntary manslaughter, provided it appear that

she was in a helpless state and unable to appeal elsewhere for aid, and that the death, though not intended, nor anticipated by him, was the natural and reasonable consequence of his negligence. * * * A criminal intent is not necessary in involuntary manslaughter." And in *Owens* v. *State,* 6 Okla. Crim. 110, Ann. Cas. 1913B 1218, 116 Pac. 345, 36 L. R. A. (N. S.) 633, the court in construing a statute requiring a father to provide necessary support and education for his child, said: "The word 'support,' as used in the statute, includes necessary medical attendance, as much so as necessary food and clothing." Likewise in *Morse* v. *Powers,* 45 Vt. 300, it was said: "The plaintiff agrees that the son should have 'support for himself and family from the business,' and he was in the habit of appropriating goods for that purpose. Proper medical treatment to the sick is deemed by usage as necessary as the provision of bread to the hungry." It has been held, however, in at least one instance, that the failure of a father to procure medicine to be administered to his children, would not support a prosecution under a statute making it a crime to torture, torment or deprive a child of necessary sustenance. *Justice* v. *State,* 116 Ga. 605, 42 S. E. 1013, 59 L. R. A. 601. The court said in that case: "There is a very great difference between depriving a child of sustenance, and refusing to permit medicine to be administered to him. Sustenance is 'that which supports life; food, victuals, provisions'; while medicine is defined to be 'any substance administered in the treatment of diseases; a remedial agent; a remedy, physic.' Our statute, in the use of the word 'sustenance,' means that necessary food and drink which is sufficient to support life and maintain health. And evidence that while a father fully provides for the wants of his children as to food, he refuses to permit them to take medicine, will not support a conviction under this statute." The decision in that case, however, was based on the wording of the peculiar statute and did not involve the general doctrine of the liability of one who wilfully neglects to perform duty imposed on him by law.

Assuming, then, that medical attendance in proper cases is included among the duties owed by a parent to his child, or by

others occupying similar relations, and this seems to be unquestioned, the question arises whether the religious belief of one on whom is cast the duty of furnishing medical attendance to another can be set up as a defense to a criminal prosecution for his failure to furnish such medical attendance. The question appears to have arisen most frequently in the United States in cases where the party accused was a Christian Scientist, and believed in faith rather than a medical cure. In England the accused has in most instances belonged to the sect known as the "Peculiar People," who substitute for medicine in case of sickness the prayers of their elders and the anointing of the patient with oil. While the courts of modern days have been careful to refrain from interference with religious belief as such, they have been no less positive in denying the right of any person or association of persons to commit offenses against the general welfare of the public under the cloak of religious teaching. The general doctrine as to religious belief as an excuse for the violation of law was clearly and forcibly stated by the Supreme Court of the United States in a case involving the right to engage in polygamy as follows: "The only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice.?" *Reynolds* v. *United States,* 98 U. S. 145, 25 U. S. (L. ed.) 244.

The principle therein announced has been followed and ap-

plied by the great majority of cases dealing with the question of religious belief as a defense to a prosecution for failure to furnish medical attention. *People* v. *Pierson,* 176 N. Y. 201, 68 N. E. 243, 98 Am. St. Rep. 666, 63 L. R. A. 187, reversing 80 App. Div. 415, 81 N. Y. S. 214. See also *State* v. *Chenoweth,* 163 Ind. 94, 71 N. E. 197; *Kansas City* v. *Baird,* 92 Mo. App. 204; *Spead* v. *Tomlinson,* 73 N. H. 46, 59 Atl. 376, 68 L. R. A. 432; *State* v. *Marble,* 72 Ohio St. 21, 2 Ann. Cas. 898, 73 N. E. 1063, 106 Am. St. Rep. 570, 70 L. R. A. 835.

In the leading case of *People* v. *Pierson,* supra, it appeared that the defendant was indicted for violating a section of the Penal Code of the state of New York, which provides that "a person who wilfully omits, without lawful excuse, to perform a duty, by law imposed upon him, to furnish food, clothing, shelter, or medical attendance to a minor * * * or neglects, refuses or omits to comply with any provisions of this section, * * * is guilty of a misdemeanor. * * *" The defendant was charged under this statute with having omitted, without lawful excuse, to perform a duty imposed upon him by law, in failing to furnish medical attendance to his minor child, and refusing to allow her to be attended by a regular physician, when she was sick with and suffering from the disease of pneumonia. The excuse offered by the father of the child for not calling a physician was that he believed in Divine healing, which could be accomplished by prayer. He stated that he belonged to the "Christian Catholic Church of Chicago"; that he did not believe in physicians, and that his religious faith led him to believe that the child would get well by means of prayer. He believed in diseases, but believed that religion was a cure for all disease. This excuse or justification on the part of the defendant for violating the statute in question was not sustained by the court, and his conviction below was affirmed. In concluding its opinion the court used the following language: "We are aware that there are people who believe that the Divine power may be invoked to heal the sick, and that faith is all that is required. There are others who believe that the Creator has supplied the earth, nature's storehouse, with everything that man may want for his

support and maintenance, including the restoration and preservation of his health, and that he is left to work out his own salvation, under fixed natural laws. There are still others who believe that Christianity and science go hand in hand, both proceeding from the Creator; that science is but the agent of the Almighty through which he accomplishes results, and that both science and Divine power may be invoked together to restore diseased and suffering humanity. But, sitting as a court of law for the purpose of construing and determining the meaning of statutes, we have nothing to do with these variances in religious beliefs and have no power to determine which is correct. We place no limitations upon the power of the mind over the body; the power of faith to dispel disease, or the power of the Supreme Being to heal the sick. We merely declare the law as given us by the legislature."

In a recent case arising in New Jersey, the court in imposing on a father a fine of $1,000 for manslaughter in allowing his infant daughter to die of diphtheria without medical treatment said: "I am satisfied from the evidence in this case that your failure to secure medical aid for your daughter during her illness arose from a conscientious belief on your part of the efficacy of the treatment recognized by the Christian Science Church, of which you are a member. * * * However, in the light of present-day science, which is the result of many years of progressive experiment and demonstration, no one is justified in neglecting the use of such agencies as have been shown to be efficient in the treatment of malignant and contagious diseases."

The prevailing rule that religious belief does not constitute a defense for the wilful neglect to furnish medical attendance when such a duty is imposed by law is also controlling in England and Canada. *Reg.* v. *Senior,* (1899) 1 J. B. (Eng.) 283, 19 Cox. C. C. 219; *Rex* v. *Lewis,* 6 Ont. L. Rep. 132, 7 Can. Crim. Cas. 261, 23 Can. L. T. 257, 2 Ont. W. Rep. 290, 566. In the case last cited the court, in sustaining a conviction for manslaughter based on the failure to furnish medical attendance to a child, said: "The question, therefore, of the prisoner's guilt or innocence, depends upon whether he had or

had not omitted, without lawful excuse, to provide necessaries, that is to say the necessaries of life, whatever they were, for his child, in consequence of which its death was caused. What are or may be such necessaries in any particular instance, is not defined by the Code, but I can see no reason for saying that medical aid, assistance or treatment may not, under the circumstances, be necessary quite as much as food and clothing are so. * * * There was evidence on which the jury might find that medical aid and assistance ought to have been provided, and the further questions for their determination were whether it had been in fact provided, and if not, whether it had been omitted—neglected—by reason of any lawful excuse. In dealing with all these questions, the jury would have to take into consideration, and they were so directed, the prisoner's knowledge of the child's illness and its serious nature, and his ability to procure and pay for medical aid and treatment. In giving evidence on his own behalf, the prisoner admitted that the child's illness was such that at one period of it he would have called in a doctor if he had not been a Christian Scientist. Speaking for myself, I must say that in such a case as this the jury ought to be told that no matter how earnestly a parent might believe in the efficacy of Christian Science treatment as developed in Mrs. Eddy's handbook of the doctrines of the sect, yet if they came to the conclusion that medical aid and treatment was necessary, they ought also to find that would not be furnished by means of mental treatment by a Christian Science 'demonstrator.' Persons sui juris may, by mutual consent and within certain limits, practice upon each other what experiments of this kind they please, and in some instances and in some kinds of disorders, where the mind of the patient is responsive to the treatment, it may possibly be done with beneficial results. But it would be shocking if in the case of infants or others incapable of protecting themselves, they and the community in which they lived were to be exposed to danger from contagious and infectious diseases which the instructed common sense of mankind in general does not as yet find or admit to be curable by means only of subjective or mental treatment." In *Reg.* v.

Cook, 58 Alb. L. J. 232, 62 J. P. (Eng.) 712, it appeared that the defendant parents were members of a sect known as the "Peculiar People," whose belief was opposed to medical treatment in case of sickness, and who substituted therefor prayers by elders and the anointing the patient with oil. Holding that their religious belief constituted no defense in a prosecution for manslaughter in failing to provide medical attendance for their child when necessary, the court said: "The speech made by the male defendant is of a most fatalistic character. Not only would he not call in a doctor, but he left his case today absolutely in the hands of the Lord. He did not want any counsel, but said the Lord Jehovah would get a proper verdict; at least, so I understand it. Although the conclave of the 'Peculiar People' had decided that a physician was not to be called in in the case of sickness, it had not yet considered the case of a surgeon. The evidence was that none of the 'Peculiar People' had yet broken bones, but when a case of that kind happened they would determine whether the Lord could set bones or whether he could not. It is the duty of parents to provide medical aid for their children. A child did not know anything about the tenets of the 'Peculiar People.' While a child is of tender years and could not choose for itself the law protects it. If the defendants neglect the duty which the law imposed upon them—the duty of calling in medical aid for the child—and death is thereby caused or accelerated, they are guilty of the charge made against them." It appears from the language of the court in this case that not only the medical profession, but also the legal, was taboo with the members of this particular faith.

While the liability of a person on whom the duty is cast by law for failure to furnish adequate medical attendance in case of sickness may be said to rest on the ground of omission to perform a legal duty owed to another, there is a second phase of the liability which is grounded on the duty that a member of society owes to his fellow-citizens. In respect to this duty, as well as that owed to the individual, religious belief cannot be set up as an excuse for a failure to comply therewith. This angle of the matter

was set out in the case of *In re First Church of Christ, Scientist,* 205 Pa. 543, 55 Atl. 536, 97 Am. St. Rep. 753, 63 L. R. A. 411 as follows: "In certain diseases the individual affected may be the only one to suffer for lack of proper attention. But in other types, of a contagious or infectious nature, they may be such as to endanger the whole community, and here it is the policy of the law to assume control and require the use of the most effective known means to overcome and stamp out disease which otherwise would become epidemic. In such cases, failure to treat, or an attempt to treat, by those not possessing the lawful qualifications, are equally violative of the policy of the law. It may be said that the wisdom or the folly of depending upon the power of inaudible prayer alone, in the cure of disease, is for the parties who invoke such remedy. But this is not wholly true. 'For none of us liveth to himself, and no man dieth to himself,' and the consequence of leaving disease to run unchecked in the community is so serious that sound public policy forbids it. Neither the law nor reason has any objection to the offering of prayer for the recovery of the sick. But in many cases both law and common sense require the use of other means which have been given us for the healing of sickness and the cure of disease. There is ample room for the office of prayer, in seeking for the blessing of restored health, even when we have faithfully and conscientiously used all the means known to the science and art of medicine."

MINOR BRONAUGH, in *Law Notes.*